

Property Focus Update

Changes to Business Rates and Empty Property Relief

What are Business Rates?

Business rates are a charge on commercial property and there are different rules governing industrial premises (such as factories and warehouses) and other commercial buildings (such as offices and shops).

The position until the 1st April 2008 was that industrial premises were exempt from business rates when the property was empty ('Empty Rates') but the owners of other empty commercial buildings were liable for mandatory payment of rates at 50% of the basic rate after an initial three month period of vacation.

Who pays them?

Empty Rates are paid by the 'owner' of the property. An 'owner' of a property is defined as the person or body entitled to occupation, therefore this could be the freeholder or the tenant. There are exemptions for properties held by charities and community amateur sports clubs provided the property is also used by the charity or club for qualifying purposes.

The New Act and Regulations

From the 1st April 2008 the Rating (Empty Properties) Act 2007 (the 'Act') and the regulations giving effect to the Act now apply meaning the exemption from Empty Rates in respect of industrial premises in England and Wales no longer applies. The then Government was widely criticised for introducing this measure in the prevailing economic climate and responded by amending the regulations with effect from 1 April 2009.

From 1 April 2009 Empty Rates were charged on qualifying industrial premises at 100% after an initial six month period following vacation.

Other commercial buildings saw Empty Rates rise from 50% to 100% with the initial exemption period still remaining at three months. However, the following exemptions apply:

- the new zero rate provided for by the Act will mean that no Empty Rates are payable if the empty property is held by a charity and appears likely to be used next for charitable purposes or the property is held by an amateur sports club and is likely to be next used for the purposes of the club
- listed buildings, premises where occupation is unlawful and premises that are incapable of occupation because of an action by a public authority are also exempt pursuant to these regulations.
- With effect from 1 April 2009 all non-domestic properties with a rateable value less than £15,000 were exempted. This exemption was extended for a further year from 1 April 2010 for non-domestic properties with a rateable value less than £18,000.
- The Communities Minister indicated on 16 December 2010 that this relief would be reduced to £2,600 with effect from 1 April 2011 on the grounds that the government would otherwise lose £400 Million in revenue.

Where properties are part occupied a Valuation Officer will be required to apportion the properties rateable value between its occupied and unoccupied parts. The Empty Rates will apply to the empty parts of the building.

Permanent Exemptions

The regulations also introduce a full exemption from Empty Rates for companies in administration. The exemption will apply until the end of the administration and is in addition to exemptions already in force for individuals who are bankrupt, and companies in liquidation.

Anti Avoidance

The Government has consulted with interested parties on secondary legislation in this area and primarily on the issue of 'anti avoidance' legislation. The Government is concerned that property may be intentionally damaged for the purposes of avoiding rates. For the time being these proposals have been put on hold but this is likely to be reviewed if owners habitually use strip out works as an avoidance device.

Conclusion

Owners and tenants of unoccupied commercial property should be aware that the amount of relief given has now been significantly reduced as a result of the Act and will drop even further if the latest government statements are put into effect. After an initial 3 month exemption period for shops and offices and a six month exemption period for industrial premises the full amount of the business rate will now be payable. However, far from yielding the additional revenue the Minister expects, it seems likely that there will be a marked increase in the insolvency of small businesses. Landlords may well force sitting tenants to remain in place as long as possible even if not trading or paying rent simply to avoid the liability for empty rates.

For further guidance on the charging of business rates and the remaining exemptions please contact one of our Commercial Property Solicitors.

Note:

This information sheet is provided for your general information only, and does not seek to set out the legislation in this area in detail or to provide specific advice.

If you have any queries, or wish to discuss specific circumstances, please contact a member of the commercial property team based at Guildford or Woking.

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